IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9331 of 2001
with
CIVIL APPLICATION NO. 4669 OF 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GAURANG GIRISHCHANDRA VAHIA - Petitioner(s)
Versus
NAYANAGAURANG VAHIA - Respondent(s)

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Appearance :
MR TR MISHRA for Petitioner(s) : 1,
MR DIPAK R DAVE for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 22/08/2006

ORAL JUDGMENT

1. By instant Petition filed under Articles 226 / 227 of the Constitution of India, the Petitioner

challenges the order dated 23.8.2001 recorded below application exh.10 in Hindu Marriage Petition No. 1851 of 2000 by the Family Court No.2, Ahmedabad, by which the application filed by the Respondent – Wife against the Petitioner–Husband, under Section 24 of the Hindu Marriage Act ("the Act" for short) to receive the maintenance from the Petitioner – Husband, pendent lite and expenses of the proceedings is allowed and thereby Petitioner is directed to pay Rs.1500/- per month to the Respondent – Wife towards interim alimony from the date of the application.

2. The Petitioner has filed HMP No. 1851 of 2000 against the Respondent in the Family Court, Ahmedabad, stating therein that the Respondent - wife had married on several occasions in the past and kept the Petitioner - Husband in dark and got the marriage registered. It is, therefore, prayed that a declaration be granted that no legal marriage has taken place between the Petitioner and the Respondent.

3. In the said Petition filed by the Petitioner, the Respondent filed application under Section 24 of the Act praying to grant interim alimony to the extent of Rs.7000/- per month from the Petitioner. It is the case of the Respondent that she has been ill-treated by her husband and once her husband has tried to kill her under the influence of liquor and therefore she had come to her parents and thereafter the Petitioner -

husband filed the Petition for declaration that the marriage is null and void, therefore has prayed for interim alimony of Rs.7000/- per month from the Petitioner during the pendency of the Petition. In the said application it is also contended that the Petitioner is earning Rs.16000/- per month.

4. The Application has been contested by the Petitioner on the ground that the marriage has not legally taken place and the Respondent has acquired huge amount from her previous husband and she wants to repeat the same thing with him and she is not entitled to any interim alimony from him.

5. The learned Judge of the Family Court, Ahmedabad, after hearing the learned advocates appearing for the parties, allowed the application filed by the Respondent, vide order dated 23.8.2001 and thereby the Petitioner is directed to pay Rs.1500/- per month to the Respondent towards the interim alimony from the date of the application, which has given rise to the present petition.

6. This Court has considered the submissions advanced by Mr. T.R.Mishra, learned advocate of the Petitioner and Mr. Dipak R. Dave, learned Advocate for the Respondent, perused the impugned order as well as the averments made in the Petition and also the Reply Affidavit filed by the Respondent.

7. The sole contention advanced by Mr. T.R.Mishra,

learned advocate of the Petitioner is that the Petitioner has filed Petition against the Respondent under Section 11 of the Act for declaration that the marriage between the Petitioner and the Respondent is a void marriage as the Respondent has suppressed about her previous marriage and therefore Respondent is not entitled to interim alimony under Section 24 of the Act.

8. The aforesaid contention of Mr. T.R.Mishra, learned advocate of the Petitioner has no merit and substance, in view of the latest decision of the Supreme Court in the case of Ramesh Chandra Rampprataji Daga v/s. Rameshwari Ramesh Chandra Daga, 2005 (1) GLH 288 SC. In this case, a similar question arose before the Supreme Court. The Supreme Court, while considering the claim of the wife for permanent alimony and maintenance, has interpreted Section 25 of the Act and said that a bigamous marriage may be declared illegal being in contravention of the provisions of the Act but it cannot be said to be immoral. Section 25 of the Act enables the Court to award maintenance at the time of passing all types of decree as provided under Sections 9 to 13. In para 20 of the judgement, the Supreme Court has observed as under:

"It is well known and recognized legal position that customary Hindu Law like Mohammedian Law permitted bigamous marriages which were prevalent in all Hindu families and more so in

royal Hindu families. It is only after the Hindu Law was codified by enactments including the present Act, that bar against bigamous marriages was created by S.5(i) of the Act. Keeping into consideration the present state of the statutory Hindu Law, a bigamous marriage may be declared illegal being in contravention of the provisions of the Act but it cannot be said to be immoral So as to deny even the right of alimony or maintenance to a spouse financially weak and economically dependant. It is with the purpose of not rendering a financially dependant spouse destitute that S. 25 enables the court to award maintenance at the time of passing any type of decree resulting in breach in marriage relationship."

9. Applying the principle laid down by the Supreme Court in above referred to judgement, to the facts of the present case, according to this Court, the principal enunciated by the Supreme Court in the said case is applicable with more vigor as in the instant case, the application was filed by the Respondent – Wife for interim alimony under Section 24 of the Act whereas before the Supreme Court the application is filed under Section 25 of the Act for getting permanent alimony, and the trial Court has not still adjudicated the plea raised by the petitioner about the void marriage between the parties.

10. So far as awarding of Rs.1500/- per month as

interim alimony is concerned, according to this Court, it cannot be said to be unreasonable in view of the fact that the Petitioner is earning Rs.16000/- approximately per month.

11. Seen in the above context, this Petition fails and accordingly it is dismissed with no order as to costs. Rule is discharged. Interim relief granted earlier shall stand vacated.

12. Since Special Civil Application No. 9331 of 2001 is dismissed, no order is required to be passed on Civil Application No. 4669 of 2006.

13. Mr. T.R.Mishra, learned advocate of the Petitioner, upon instructions received from the Petitioner, who is personally present before the Court, states that the Petitioner shall deposit the entire amount, awarded in favour of the Respondent, which according to him, would be approximately Rs.90,000/-, within a period of one month hereof before the trial Court and, therefore, appropriate direction for expeditious disposal of the HMP No. 1851 of 2000 may be issued to the Family Court, Ahmedabad.

14. Mr. Dipak Dave, learned Advocate for the Respondent has no objection if the amount is deposited by the Petitioner before the Family Court, as per the statement made by Mr. T.R.Mishra, learned advocate of the Petitioner and on that condition appropriate direction for expeditious disposal of the HMP No. 1851 of 2000 may be issued.

15. On the facts and in the circumstances emerging

from the record of the case and more particularly in view of the statement made by Mr. T.R.Mishra, learned advocate of the Petitioner, upon instructions received from the Petitioner, the Petitioner is directed that he shall deposit the entire amount, which would be approximately Rs.90,000/- or whatever may be found due and payable, with the Family Court, Ahmedabad, within a period of one month hereof. On depositing the said amount, the Family Court shall make the HMP No. 1851 of 2000 ready and shall give expeditious hearing to the same and shall decide the same on or before 31.12.2006.

16. On depositing the aforesaid amount, the Family Court shall permit the Respondent - wife to withdraw the said amount unconditionally.

(A.M.Kapadia,J)

Jayanti*